

REMARKS/ARGUMENTS

Claims 1-35 were pending in the application. According to the February 24, 2006 Office Action, claims 1-4, 6-7, 9-17, 19, 21, and 23-32 were rejected, claims 7, 10, 11, 21, 25, 26, and 31 were objected to, and claims 5, 8, 18, 20, 22, and 33-35 were withdrawn from consideration. Applicants have amended claims 7, 10 and 12-16, 21, 25, and 31. Accordingly, claims 1-4, 6-7, 9-17, 19, 21, and 23-32 are under consideration. Applicants maintain that the amendments do not introduce any new matter.

Allowable Claims

In the Office Action, the Examiner appeared to indicate that dependent claims 7, 10, 11, 21, 25, 26, and 31 would allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. In response thereto, Applicants have amended claims 7 and 10 to be independent claims that include the limitations of claim 1, have amended claim 21 to be an independent claim that includes the limitations of claim 12, have amended claim 25 to be an independent claim that includes the limitations of claims 12 and 24, and have amended claim 31 to be an independent claim that includes the limitations of claim 27. Claim 11 continues to depend from claim 7 and claim 26 continues to depend from claim 21.

Amendments to the Specification

Applicants have amended the Specification at paragraphs [0004], [0074], and [0083] to correct several minor typographical errors.

Amendments to Claims 10 and 12

Applicants have amended claims 10 and 12 to correct several minor typographical errors. In particular, claim 10 has been amended to recite “grouping” rather than “gouping” and claim 12 has been amended to recite “a plurality of modular guard sectionsu” rather than “guard section”.

Rejection of Claims 13-16 Under 35 U.S.C. 112

In response to the Examiner's rejection of claims 13-16 under 35 U.S.C. 112, second paragraph, Applicants have amended these claims to clarify the interconnection of the signage member with the guard section/recess (now recessed surface).

Applicants have also amended claims 14-16 to recite "one or more" tabs, slots, or channels to further protect Applicants' invention.

Rejection of Claims 1-4, 9, 27-29, and 32 in view of Mason

The Examiner rejected claims 1-4, 9, 27-29, and 32 under 35 U.S.C. 103(a) as being unpatentable over Mason, patent 6,234,086 (hereinafter Mason). Beginning with claim 1, this claim recites in part a guard comprising "a plurality of modular guard sections, ... each modular guard section having a substantially wedge or triangular shape in cross section to increase the stability of the guard section...." In the Office Action, the Examiner indicated that Mason also teaches a guard made of modular guard sections 22 but does not teach that each guard section 22 has a wedge or triangular shape in cross section, as recited by claim 1. Here, the Examiner took official notice that the "use of particular shapes to increase or decrease rigidity is a well known feature in engineering mechanics" and that it would be obvious to "use such knowledge to apply such shapes in the same well known manner" to modify the guard sections of Mason to have wedge or triangular cross sections, thereby obviating claim 1. Applicants respectfully disagree.

Specifically, Applicants note that when official notice is taken, "the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge" (MPEP 2144.03B). Here, the Examiner has merely asserted that using shapes to increase or decrease rigidity is well known. While certain shapes may provide increased or decreased rigidity, Applicants' invention as recited by claim 1 does not recite just any shape but rather, specifically recites the use of a "wedge or triangular" cross sectional shape. Notably, the Examiner has not set forth any specific factual findings that the use of a wedge or triangular cross sectional shape is well known or commonly used to increase rigidity, as asserted by the Examiner, let alone stability, as recited by claim 1.

In addition, even assuming, *arguendo*, that a wedge or triangular cross sectional shape is well known to provide rigidity or stability, the Examiner has not provided any suggestion or

motivation as to why one would choose to modify the guard sections 22 of Mason to have a wedge or triangular cross sectional shape as compared to any other shape that may provide rigidity or stability. On the contrary, Applicants specifically set forth several advantages for the wedge or triangular cross sectional shape including, in addition to improved stability of the guard sections, easier viewing of signage that may be placed on the guard sections, improved clearance between shopping/stock carts and merchandise stacked on a pallet, and allowing greater overhang of merchandise on a pallet over the guard sections (Specification, paragraphs [0068], [0071], and [0072]).

Based on the foregoing, it appears to Applicants that the Examiner has merely used Applicants' disclosure as a motivation to modify the guard sections 22 of Mason to have of a wedge or triangular cross sectional shape. Applicants respectfully submit, however, that it is improper to use Applicants' disclosure in such a manner, Applicants' disclosure not being prior art.

Accordingly, for the foregoing reasons, Applicants respectfully submit that Mason does not teach, suggest, nor disclose claim 1, in addition to claims 2-4 and 9, which depend therefrom.

Turning to independent claim 27, this claim recites in part a guard comprising "at least one guard section, ... each guard section having a substantially wedge or triangular shape in cross section to increase the stability of the guard section." Applicants note that claim 27 recites limitations similar to claim 1 and such, respectfully submit that Mason does not teach, suggest, nor disclose claim 27, in addition to claims 28-29 and 32, which depend therefrom, for reasons similar to claim 1.

Rejection of Claims 6, 12, 17, 19, 23, 24 and 30 in view of Mason and Giorgio

The Examiner rejected claims 6, 12, 17, 19, 23, 24, and 30 under 35 U.S.C. 103(a) as being unpatentable over Mason in view of Giorgio, patent 6,260,487 (hereinafter Giorgio). Beginning with independent claim 12, Applicants have amended this claim to clarify Applicants' invention. Claim 12 now recites in part a guard comprising:

a plurality of modular guard sections ...;

wherein at least one of the guard sections has an outwardly facing surface having an area configured to receive a removable signage member.

Applicants respectfully submit that Mason and Giorgio, alone or in combination, fail to teach, suggest, or disclose a guard section that includes an “area configured to receive a removable signage member,” as claim 12 recites. Specifically, Giorgio teaches a pallet skirt 250 that may include writing or logos 254 placed thereon (Giorgio, column 5, lines 8-14). Applicants respectfully submit, however, that no where does Giorgio teach, suggest, or disclose that writing or logos 254 are a “removable signage member” or more specifically, that pallet skirt 250 is configured to receive a “removable signage member.” In addition, Applicants also note that Mason teaches that guard sections 22 may include indicia (Mason, column 7, lines 35-40). However, like Giorgio, no where does Mason teach, suggest, or disclose that such indicia are a “removable signage member” or more specifically, that any of guard sections 22 are configured to receive a “removable signage member.” Accordingly, because neither Mason nor Giorgio teaches, suggests, or discloses a guard section or guard configured to receive a “removable signage member,” as recited by claim 12, Applicants submit that the combination of Mason and Giorgio also fail to teach or suggest claim 12, in addition to claims 13-17, 19, and 23, which depend therefrom.

Turning to claim 24, this claim recites that “each guard section [of claim 12] has a substantially wedge or triangular shape in cross section to increase the stability of the pallet guard section.” As discussed above for claim 1, Applicants respectfully submit that there is no suggestion or motivation to modify the guard sections 22 of Mason to have wedge or triangular shape in cross section. In addition, Applicants respectfully submit that Giorgio provides no suggestion or motivation to modify the guard sections 22 of Mason to have wedge or triangular shape in cross section, Giorgio only teaching a single pallet skirt that has a rectangular shape in cross section (see Giorgio, Figure 4C). Accordingly, Applicants submit that claim 24 is nonobvious in view of Mason and Giorgio.

Turning to claims 6 and 30, these claims depend from claims 1 and 27 respectively, and are thereby nonobvious in view of Mason and Giorgio for the same reasons as set forth above for claims 1 and 27.

Double Patenting

The Examiner rejected claims 1-4, 6, 7, 9-17, 19, 21, and 23-32 under the doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. patent

6,408,768. Applicants respectfully disagree. Specifically, with respect to claims 1-4, 6, 7, 9-11, 24-25, and 27-32 of the present application, each of these claims recite that the guard sections have “a substantially wedge or triangular shape in cross section.” Applicants note that none of the claims of the ‘768 patent recite guard sections that have “a substantially wedge or triangular shape in cross section.” In addition, as similarly discussed above with respect to Mason, Applicants submit that the Examiner has provided no suggestion or motivation to modify the guard sections of the pallet guards recited by the claims of the ‘768 patent to have “a substantially wedge or triangular shape in cross section.”

Similarly, claims 12-17, 19, 21, and 23-26 of the present application each recites that at least one of the guard sections “has an outwardly facing surface having an area configured to receive a removable signage member.” Applicants note that none of the claims of the ‘768 patent recite guard sections that have “an area configured to receive a removable signage member.” In addition, as similarly discussed above with respect to Mason and Giorgio, Applicants submit that the Examiner has provided no suggestion or motivation to modify the guard sections of the pallet guards recited by the claims of the ‘768 patent to have “an area configured to receive a removable signage member.”

Accordingly, for the foregoing reasons, Applicants respectfully request the withdrawal of the rejection of claims 1-4, 6, 7, 9-17, 19, 21, and 23-32 under the doctrine of obviousness-type double patenting.

Conclusion

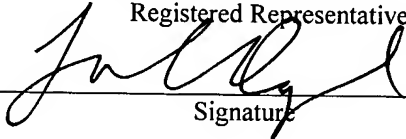
Since Mason and Giorgio fail to teach or suggest, alone or in combination, Applicants’ invention as now set forth in claims 1-4, 6, 9, 12-17, 19, 23-24, 27-30, and 32, Applicants submit that these claims are clearly allowable. Favorable reconsideration and allowance of these claims, together with claims 7, 10, 11, 21, 25, 26, and 31 indicated as allowable, are therefore requested.

Applicants earnestly believes that this application is now in condition to be passed to issue, and such action is also respectfully requested. However, if the Examiner deems it would in any way facilitate the prosecution of this application, he is invited to telephone Applicants’ agent at the number below.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 21, 2006:

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Name of applicant, assignee or
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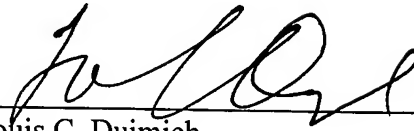
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Date of Signature

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Respectfully submitted,



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